

THESE MINUTES HAVE NOT BEEN READ OR APPROVED BY THE CHAIRWOMAN
PUBLIC SAFETY AND CRIMINAL JUSTICE COMMITTEE

DATE: August 25, 2004

Second Draft

CALLED TO ORDER: 5:10 p.m.

ADJOURNED: 6:10 p.m.

ATTENDANCE

Attending Members

Mary Moriarty Adams, Chairwoman
Lynn McWhirter
William Oliver
Lincoln Plowman
Steve Talley
Scott Schneider

Absent Members

Sherron Franklin

AGENDA

PROPOSAL NO. 468, 2004 amends the Revised Code with respect to various fees paid to the Marion County Sheriff's Department
"Do pass as amended"

Vote: 6-0

PUBLIC SAFETY AND CRIMINAL JUSTICE COMMITTEE

The Public Safety and Criminal Justice Committee of the City-County Council met on Wednesday, August 04, 2004, Chairwoman Mary Moriarty Adams called the meeting to order at 5:10 p.m., with the following members present: Lynn McWhirter, William Oliver, Lincoln Plowman, Steve Talley and Scott Schneider. Absent was Sherron Franklin. Also present were Marion County Auditor, Martha Womacks; Council Counsel, Aaron Haith and Council CFO, Kent Burrow.

PROPOSAL NO. 468, 2004 amends the Revised Code with respect to various fees paid to the Marion County Sheriff's Department

Chairwoman Moriarty-Adams said one proposal was on the agenda. She said the proposal was amended in committee on August 18, 2004 and the committee will work off the amended version. She said Steven Eicholtz, Counsel for Marion County Sheriff's Department (MCSD) and Aaron Haith would walk the Council through the amended version and if there are additional changes they will need to be made during the meeting.

Councillor Schneider asked if the amended version was attached to the agenda. Chairwoman Moriarty-Adams said it was the loose document, see Exhibit A.

Councillor Talley moved, seconded by Councillor Schneider, to amend Proposal No. 468, 2004 to the loose version that was handed out. The motion carried by a vote of 6-0.

Counsel Haith said one of the things that was not shown at the last meeting was the Code, see Exhibit B. He said the Code has two Sec. 131-107 and they very different subject matters. Counsel Haith said the reason for changing Sec. 131-107, which is currently designated as "Service of Process Fees", to Sec. 131-109, is to eliminate duplication from the Code and make it one citation for fees that can be charged for duplicate copies. He said the new name of Section 131-109 will be "County Sheriff's Department Civil Division Fees". As a matter of understanding what is happening, generally when a new section of the Code is offered for consideration, the new Section is not underlined at all. He said that was the practice Bob Elrod (former Council Counsel) created and Peggy Stawick (former Council Assistant Clerk) used. He said he talked to Mr. Elrod, and in order to determine the amendments made from previous meetings and the proposed amendments to the new section, there are strikeouts and underlines because until the amendments are accepted, there is no way to determine the language that has been changed. He said they tried to make changes from the last meeting. Counsel Haith said the version the Councillors has before them reflects the amendments from the last meeting. Counsel Haith said he was trying to make it so the Councillors see what was changed at the last meeting and ensure those changes are reflected to the Councillors satisfaction in the amended version that is submitted tonight.

Mr. Eicholtz said Proposal No. 468, 2004 is the establishment and creation of certain new fees. He said he would go through each section and highlight the changes made based on the Councillor's request at the prior committee hearing. Mr. Eicholtz said in the weeks that have transpired since introducing the proposal, he has had conversations with people representing mortgage companies and they had some suggestions to change the language. That language is included and it reflects what we changed based on discussions with mortgage lenders. As we went through, we found minor changes such as capitalization or changing the wording. For instance the name of a fund had additional words, and those words were stricken. In other places where there seemed to be inconsistencies, changes were made.

Mr. Eicholtz said Sec. 131-109 is formerly entitled "Service of Process Fees". Subsection "a" is the original section of the ordinance creating certain service of process fees. He said the section is being changed to the "County Sheriff's Department of Civil Division Fees". Subsection "b" is a new section and it creates a "Civil Division" fee for judicial foreclosures and lien foreclosures, for Sheriff's sales of real estate pursuant to a judgment lien or a foreclosure lien. He said in the original language, on the second line, there is a change from "may", which makes it seem as if the fee is discretionary for the Sheriff, to "shall". Shall means the Sheriff does not have discretion as to whether or not to charge the fee.

Mr. Eicholtz said after the words "Sheriff's sale", "user fee" has been inserted to make it clear this is a user fee. The fee is payable in the amount of \$200. The prior language in the original proposal was payable at the time of praecipe for sale in connection with the file. He said mortgage companies and the attorney's representing the mortgage companies, had some concern about that section. Mr. Eicholtz said a mortgage foreclosure proceeding happens when a praecipe is filed and an order is initiated and requested for a foreclosure. During that time, there is a period of redemption where the property owner could come in, pay what is owed, take the property and there would be no foreclosure sale. Mortgage companies had a concern they would have to pay a fee at the time of praecipe, there would not be a sale, and they would be stuck with a fee. Therefore, the language providing for this to occur at the time of praecipe has been removed. Now the fee shall be "payable as a cost of the offer and sale as provided for in IC 32-30-10-14". What that contemplates is that the Sheriff's \$200 sale fee will be a cost of the sale similar to appraisal fees and title insurance fees. The fee would be distributed from the proceeds of the sale. He said the language "This fee is in addition to any other fees allowed by statute" was redundant for reasons he and Counsel Haith discussed in terms of different statutes, and he felt the language was not necessary.

Councillor Schneider asked Mr. Eicholtz, if the mortgage companies indicated who they anticipated paying the \$200 fee when he had a discussion with them, the mortgage company or the buyer? Mr. Eicholtz said, as it is drafted, it is a cost of the sale. It will come out of the distribution of the sale. He said it would be the debtor or the seller and the mortgage company might argue it is less money they would get. If the property sold for more than the judgment, the debtor would argue it came out of their sales price.

A deficiency sale would determine who actually bears the cost. He said that is more of a legal/lawyer's answer to the question. Councillor Schneider asked if there were someone from the mortgage industry who would like to speak to that. Richard Hendrickson with Featherworks and Associates, a company that represents residential lenders, said their opinion is that a large amount of the time it will turn out to be their clients, which are the lenders, who will pay the fee. The reason is because their clients usually buy the property back at the sale. He said if their clients bid in at a certain amount at the sale, it is technically paid by whomever buys the property at the sale.

Councillor Schneider asked if the lender or the mortgage company would pass it on as some sort of a fee due at closing. Mr. Hendrickson said, not necessarily. He said any of the fees or cost of the sales are borne by the mortgage company, and that will be added to a deficiency judgement or whatever else the borrower owes. Ultimately, it is charged to the borrower. It has to be absorbed because the clients will turn around and sell it on the open market for whatever the market value of the property is. The bottom line is, it is usually their client that will absorb the cost. However, if it is a deficiency it will be charged against the previous homeowner. Councillor Schneider asked if he were speaking for an association. Mr. Hendrickson answered in the negative and said he is speaking on behalf of his clients who bring the sales. Councillor Schneider asked Mr. Hendrickson for his client's opinion of this section of the proposal. Mr. Hendrickson said his company has not spoken directly to a lot of their clients, and he is trying to look out for their interest. He said, he did not know if his clients had an opinion one way or the other on this section, they just want to see fair reasonable fees assessed. Councillor Schneider asked if the fee were fair and reasonable in the clients' opinion. Mr. Hendrickson said he did not have a comment because it is much different than what the previous fees were. Councillor McWhirter asked what the fees used to be. She said she thought those were new fees and there were no fees currently charged. Mr. Eicholtz said there is not a fee currently charged in Marion County. He said there are different fees charged by some counties for different portions of the sale. In addition, if the Sheriff for example, were to utilize the services of an auctioneer, \$100 could be charged. Since the Sheriff's Department handles the sale, they don't actually bring in an auctioneer. He said they are filling the role of an auctioneer, so if those two things were compared it would be similar to the \$100 charge for the auctioneer fees. Some other counties charge a fee for posting notices, a small Sheriff's sale fee, a fee for signing the deed, etc. If you added those together with the auctioneer's fees the surrounding counties may be a little less than \$200. He said rather than having all of the different fees, this would just be one Sheriff's sale fee. Counsel Haith said the fees that other counties use are considered part of the cost of the sale and they come off the top, even if they used an appraiser that would be considered a cost of the sale.

Marion County Auditor, Marty Womacks, asked for an estimate of revenue that would be created. She said they charge \$200 for tax sales, advertisement and title work. Mr. Eicholtz said last year they held over 6,000 sales, so the revenue generated could be approximately \$1.2M. Year-to-date there have been 5,500 sales versus 6,000 for the entire twelve month period of last year. Unfortunately, that business is increasing.

Chairwoman Moriarty-Adams asked if an amendment was needed. Councillor Talley said he did not believe so because the committee had accepted the version before them as the amended version. He said subsection "c" will need to be amended. Counsel Haith said it would be cleaned up once he gets all of the amendments from the committee meeting. He said once it is ready for consideration by the full Council the Councillors will have a clean copy.

Mr. Eicholtz said Section 131-109 subsection "c", creates a new fee to be payable in connection with eviction services. Typically, this will occur if there has been a foreclosure and people need to be removed from the property and the Sheriff serves a writ of eviction. That service can be as simple as serving the writ and people vacate. Other times people involved will ask the Sheriff's Department to tender deputies to stay on site for supervision, for example, while a locksmith change locks. Usually the property has been abandoned and it is no longer being utilized, but on occasion people are still there and the lender will ask the Sheriff's Division to stay on site and monitor while the people move. That could cost up to an eight (8) hour day. There are situations when the request is made for the Sheriff to be available, and the Sheriff shows up and no one is present. The MCSD is asking for the ability to charge a fee to assist in covering the cost of those services. Mr. Eicholtz said the MCSD is proposing a \$50 per hour fee, for a minimum of one (1) hour. That will cover the situations when deputies show up and no one is present. He said one change made from the original language is the word "may" was taken out and "shall" was inserted to make it a mandatory fee and in front of the word "fee" the word "user" has been added.

Councillor Schneider moved, seconded by Councillor Talley, to change subsection "c" so the outcome would be a \$100 flat fee as opposed to a \$50 per hourly fee. Chairwoman Moriarty-Adams said it has been moved and seconded to change the fee structure of \$50 per hour to a flat fee of \$100 per occurrence. It would read "shall charge a user fee of \$100 per occurrence for services rendered in connection with the execution of an order of eviction from real estate". The amendment was passed by a vote of 6-0.

Councillor Talley asked if it was something the Sheriff's Civil Division normally does, or if the Township Constable performs the service. Mr. Eicholtz said in connection with the mortgage foreclosure, it is something the Civil Division does. He said the MCSD do some evictions for landlords. The majority the landlord-tenant evictions, he believes, go through the Small Claims Court. Councillor Schneider said he had conversations with a couple of trade organizations, associations, apartment owners and landlords and most of their evictions go through Small Claims Court, so the Township Constable would handle the those. Chairwoman Moriarty-Adams said that as she understands it subsection "c" will read, "The County Sheriff's Department, Civil Division, shall charge a user fee of \$100 per occurrence for services rendered in connection with the execution of an order of eviction from real estate".

Mr. Eicholtz said the only change in subsection “d” was from a request at the last hearing. As originally proposed the section was called the “Marion County Sheriff’s Department General Fund”. Dan Jones, Deputy Auditor, had indicated some concerns about use of that language. Mr. Eicholtz said it was changed to the “Marion County Sheriff’s Civil Division Fees Fund”. The Fund is later created by a new ordinance being proposed. Councillor Schneider asked the Auditor if all of the fees would have to come before the Council for appropriations. Auditor Womacks answered in the affirmative. Councillor Schneider asked if there were any parameters that need to be met by the Sheriff to come before the Council for an appropriation. Auditor Womacks said it would be set up in budgetary form just like other agencies. She said MCSD may even include it as part of their budget for the upcoming year with the utilization of the fund as with other fees. Councillor Schneider asked if the funds could be transferred. He said some funds are very limited in the scope of how they can be used. Mr. Eicholtz said that would be addressed in the new section where they created a Sheriff’s Department non-reverting Civil Division Fees Fund. Money in the fund would not revert at year-end and it would be subject to the normal Council budgeting appropriations on an annual basis. He said he would defer to the Auditor on whether the funds could be transferred to a different Fund. Auditor Womacks said it is a possibility, if there were an agreement on both sides. But the new members of the Council may want to know that non-reverting funds means it does not go to the General Fund at the end of the year. It continues in that fund for the future, just like the Assessment Fund.

Mr. Eicholtz said in SECTION 3, Sec. 35-271, the language did not get picked up and the new language still reads “Marion County Sheriff’s Department General Fund”. It should read “ Civil Division Fees Fund”. Councillor Talley moved, seconded by Chairwoman Moriarty-Adams and Councillor Oliver, to change the language from “Marion County Sheriff’s General Fund” to “Marion County Sheriff’s Civil Division”. Councillor Talley said he wants his amendment to cover any other area of the proposal where the language “Marion County Sheriff’s Department General Fund” appears. The motion passed was passed by a 6-0 vote.

Mr. Eicholtz said the next section is an amendment to SECTION 2 Sec.131-108. It is an existing ordinance that allows the Sheriff to charge co-payments for medical payments based on Indiana statute. The state statute allows the Sheriff to charge up to \$15 for co-payments. He said they are currently charging \$6.00 and they are asking to increase it to the maximum of \$15. He said they made some changes in the language from the original version. Subsection (b)(2) has been stricken which is a separate sentence that provides for a co-payment of \$15 on prescriptions. Prescriptions are now included in subsection (b)(1), because they are charging a flat fee of \$15 for medical treatment and prescriptions. Mr. Eicholtz said they made a provision that if a person has money in their commissary account within a certain period of time, they can be charged a co-payment. The current ordinance says 30 days and statute allows 60 days, so they are asking for a change to 60 days to comply with Indiana statute.

Mr. Eicholtz said they made a change to subsection “d”. He said the current ordinance requires the fee be paid to the County General Fund. That is inconsistent with the state statute. The state requires that there be a special fund for the fee called the “County Medical Care Fund”. The ordinance is being amended to comply with state statute to provide and create a new fund called the “County Medical Care For Inmates Fund”. He said in reviewing this language with the language that was originally proposed for the Fund, there appeared to be a discrepancy. The language “to be appropriated, by the city county council” has been stricken and the handling for the appropriations of the fees will be in the fund description itself.

Mr. Eicholtz said SECTION 3 creates the “Marion County Sheriff’s Civil Division Fees Fund”. It is a new fee for the collection of the Civil Division fees. In subsection “a”, some language from the original version has been removed. That language read “all moneys received in proceedings for the sale of real estate upon judicial foreclosure of a lien or foreclosure of a mortgage and from the Sheriff’s execution of an order of eviction from real estate”. It has been changed so that the fees that go in the fund will be the Sheriff’s Civil Fees received under Sec. 131-109. The concern was, it was written so that all the proceeds from the Sheriff’s sale would go into the account instead of the fees collected. Subsection “b” provides that it is a non-reverting fund that means the money does not go back into the County General Fund at the end of the year. Subsection “c” provides that the Marion County Sheriff’s Department may use the fees for carrying out the functions and duties of the Marion County Sheriff’s Department. Subsection “d” provides that the funds shall be paid from the fund only pursuant to appropriations by the City-County Council in the normal budgeting processes.

Mr. Eicholtz said SECTION 4 creates a new ordinance by adding Sec. 135-272, which creates the Marion County Sheriff’s County Medical Care For Inmates Fund. This is the fund for the medical co-pays. It is a non-reverting fund and all fees and monies generated by health care and prescription care co-payments shall be placed into the fund. The fund shall be administered by the Sheriff and the all funds deposited shall be appropriated and used solely for expenditures for providing medical services to jail inmates. An amount shall be paid from this fund upon demand from the County Sheriff.

Councillor Schneider asked why subsection “d” is included. Mr. Eicholtz said it is statute and payable upon demand from the Sheriff. He said it is a little different than the normal appropriation process. If you go back in the law, it actually acts as a voucher. The Sheriff tenders a voucher for the payments, and it has to be made. He said it can be disputed if that is what people like or if it is within the normal budgeting process, but the language was taken from the statute. He said he is not sure if other accounts, such as user fees that are payable in this fashion, are paid out in this manner. Mr. Eicholtz said it was drafted based on the statutory

requirements. Counsel Haith said, he accepted that because the limitation is that it can only be used for this purpose. He said he did not find, and he thought the Council would want to know, what to do if it goes up to a great sum in dollars. The statute does not give the Council a means to take the money out of the fund if it is more than what is used. He said that may be something to talk about with the state legislature. Mr. Eicholtz said the Auditor could vouch for the medical needs of the jail and things that are coming down the pipe. He said he doubted there would ever be a situation where there would be more money in the account. He said \$12,000 is the most money ever collected in the past years.

Councillor McWhirter asked if he anticipated the fund being used first and then taxpayer dollars. She said even with a \$15 co-payment for a prescription costing \$200, there still is going to be a big discrepancy that will have to be paid. She asked if the bills were paid monthly. Auditor Womacks said they have a contract that includes everything. Councillor McWhirter asked how the funds would be disbursed and used. Mr. Eicholtz said it is on demand and throughout the year it is going to grow, but it will not be large. He said it is enabling authority so they can create the procedures to do it. He said a lot of this is working with Wishard Hospital because Wishard has the contract and they have a subcontract with CMS. He said they will work with the Auditor on how to work through the process, once they have the authority to charge the fees. He said it gives them authority to do it properly in accordance with state statute. Some of the detail and procedure will be worked out once they have the enabling ordinance.

Councillor Talley asked if the money has to be used for the inmates at the jail and not at the Arrestee Processing Center (APC). Counsel Haith said the "County Jail" was used to encompass all contracts for incarceration for which the Sheriff is responsible. So if the Sheriff rented space at the DOA and that person had a cost attributable to the Sheriff, the Sheriff would be entitled to the co-payment. Councillor Talley asked who pays for the APC and Jail II. Counsel Haith said it is the Sheriff's responsibility and that is what the state statute provides. Auditor Womacks said medical costs are included in the per diem at Jail II. She said they don't pay any separate medical cost or food cost. Councillor Talley asked if the Sheriff would be able to use the funds for inmates at the APC. Counsel Haith answered in the affirmative and said in the event that it becomes necessary. He said the medical contract covers that. Mr. Eicholtz said he is not familiar with the APC contract. Councillor McWhirter said one of the ideas that has been tossed around and, where there are some budget concerns, is the idea of privatizing Jail I. She said if we did that and medical funds were included in the privatization, the fund would not be necessary.

Mr. Eicholtz said that is a possibility. Councillor McWhirter asked if there were any other costs. Auditor Womacks said the funds could still be used for per diem charges because that expense would not go away. Councillor McWhirter asked if we would be charging the inmates co-pays for something. Mr. Eicholtz said he thinks Jail I and Jail II charge inmates co-pays. He said Community Corrections Agency (CCA) also has a co-payment in place, so even the private jails have a co-pay.

Mr. Eicholtz said SECTION 5 Sec. 131-110 creates a "County Prisoner Reimbursement of Per Diem Cost". It is allowed by state statute and it allows counties to charge prisoners, under certain circumstances, for their stay in the Marion County Jail. In order to charge the fee the person has to be subject to lawful detention and it has to be a person sentenced to a felony or a misdemeanor. This means that it cannot be a person that is awaiting trial, the person has to be sentenced. The person has to be subject to lawful detention in a jail or private facility under an agreement with the County Sheriff for a period of more than seventy-two (72) hours. This language was admitted, so if per diem is being paid to someone for housing an inmate, the Sheriff could still collect the co-pay. The person cannot be a member of family of someone that makes less than 150% of the federal income poverty level. And they cannot be detained as a child subject to the jurisdiction of the juvenile court.

Mr. Eicholtz said you can figure the actual per diem. It can be the lesser of the actual per diem or thirty dollars (\$30) per day. He said they are anticipating it will be \$30 per day and he did not have the calculations as to the actual per diem that is currently set, although he and others believe it is in excess of \$30 per day. Councillor Talley asked if the 150% federal income poverty level in Sec. 131-110 subsection (b)(3), was the means test that the Courts use. Mr. Eicholtz said he thinks it is the same formula utilized to determine indigence. He said it is the language from the statute. He said he did not know if, in determining indigence, they consider the entire income of the family. Counsel Haith said they don't. He said it is written this way because some families are marginally above the federal poverty level. He said the state raised the barrier to get beyond the families who are marginal and would be able to afford the cost. Councillor Talley asked what happens if the Court declares an individual indigent and they were sentenced and they did meet the means. Counsel Haith said if the Court declares a person indigent, that is a judicial determination and he does not believe the Sheriff would come back behind the judgment, because of the theory of collateral estoppel. He said once the judge makes the declaration as a part of the sentence it ends there. Councillor Oliver asked for a linkage of the family in the process. Mr. Eicholtz said the language is taken directly from the state statute. As he interpreted the language, if a defendant asked for a public defender and asked the judge to provide an attorney at the county expense, the Court would only look at the defendant's income. Usually there is no question about others' incomes. Mr. Eicholtz said as he reads the ordinance, if a wife

does not work and the husband makes \$100,000 then the wife is a member of a family that makes in excess of the poverty level and the fee could be charged. Counsel Haith said that he believes a Court would look at the ordinance and determine that a family means the individual. Otherwise you would be punishing the family for what one individual did by making them pay. Mr. Eicholtz said he did not know the interpretation and a court may interpret this down the road. Councillor Oliver asked if a connection would be made from the inmate back to someone in the family who could pay. Mr. Eicholtz said that is state statute and the Council cannot change that. He said if the ordinance is adopted, those are the conditions of the state statute that must be in the ordinance. Councillor Oliver asked if legal representation requires the same criteria. Mr. Eicholtz said the criteria for determining if someone were indigent varied by judge. Councillor Oliver asked if there were a statutory requirement. Mr. Eicholtz answered in the negative. He

said the Court makes a determination as to whether or not they feel the party is indigent. He said Courts sometimes use the federal poverty guidelines as a standard to look at, but judges can utilize any standard they chose for the purpose of getting legal counsel and the judge is never overturned in their determination. It is basically the use of discretion, there are no guidelines in state statute to determine when someone is entitled to a public defender. The Court makes a determination of what they believe is indigent. Councillor Oliver asked if he were referring to juveniles or adults. Mr. Eicholtz said he was referring to adults, and this could not cover juveniles. Councillor Oliver asked who gets the bill and who does the collection agency go after. Mr. Eicholtz said it is the party being defended. Councillor Oliver asked if it would be the person at home. Mr. Eicholtz and Counsel Haith answered in the negative and said it is the person that is going to be incarcerated. Mr. Eicholtz said the person that is going to be incarcerated is the person that owes the bill and not the family. Chairwoman Moriarty-Adams asked who collects. Mr. Eicholtz said the Sheriff collects the fees, and if the Sheriff does not collect the money, the Office of Corporation Counsel will collect. Councillor Oliver asked if the family is linked to the payment. Mr. Eicholtz answered in the negative, and said the family is looked into for the purposes of determining whether or not the defendant owes a fee, but the family does not owe the money.

Councillor McWhirter said she was confused because on one hand they are saying the person charged with the crime is the only person being looked at and if they don't have a job they are in jail. So MCSD is not going to be collecting money from anyone. She said on the other hand, you're looking at the family income, but the family does not have to pay the fee. The person in jail has to pay, but the person does not have any money. Mr. Eicholtz said that may be true. He said MCSD may be able to charge the fee just like any collection and not be able to collect any money. He said the statute is on the books and they are asking for the authority to use it and attempt to collect money. They don't know whether it will generate a great amount of revenue. He said there was a recent article in the New York Times about ordinances like this throughout the United States. Detroit has adopted one, and it is very successful. He said there are other Sheriff's around the country trying to do this and the administrative cost doesn't justify the return. He said they may look at it and decide it will not be worth the return, but without the ordinance that cannot be considered. He said throughout the country it has been met with mixed results.

Councillor McWhirter asked if the incarcerated person spends 365 days in jail, will they be liable for the money after they get out of jail if they cannot pay the money while they are in jail. Mr. Eicholtz answered in the affirmative and said it is charged when they get out of jail and it is like another judgment. Councillor McWhirter asked if they are charged each day they are in jail. Mr. Eicholtz answered in the negative and said they will not kick a person out of jail because they cannot pay.

Councillor Schneider asked if the Sheriff is allowed to retain outside counsel to collect the fees. Counsel Haith said, generally under the current Code, the collection is first offered to the collecting agency, in this case it is the Sheriff's Department. He said the Sheriff's Department can opt to use City Legal. The person that could hire outside attorneys would be limited to City Legal as the ordinance is currently written.

Councillor Plowman asked, if the person cannot pay because they are indigent, but they own a nice home, could a lien be put on the home that the family lives in as a course of action. Mr. Eicholtz said that would be a civil lawsuit and you would get a judgement against the person that owes the debt which is the person that has been incarcerated. You cannot put a lien on someone's property that was not responsible for the debt. You can only collect against assets of the person that was incarcerated. Councillor Plowman asked what happens if it is the defendants home. Mr. Eicholtz said if it is the mother's home and in her name, and the defendant had no legal interest and no ties to the home, a lien could not be attached. Councillor Plowman said he has seen people who have been declared indigent and get a public defender. He said defendants get in jail and have a commissary account of \$500 - \$1200 to they buy cigarettes and candy. He asked if money would be taken out of that account. Mr. Eicholtz said they could, but there are some questions. He said if they are not sentenced and there has been no pre-trial, they don't want to take from the account. He said some people have argued this statute is subject to a constitutional challenge. In cases where money is taken from people who have not been declared or sentences, the law has been declared unconstitutional. He said the devil is going to be in the details to make sure this is going to be upheld. The details will be the procedures adopted to enforce the ordinance. He said there will still need to be policies and procedures developed by the Sheriff's Department to implement this and collect the money in a manner that will be upheld by the Courts.

Councillor McWhirter asked what is the average length of stay in the Marion County Jail. Mr. Eicholtz said he did not know. Counsel Haith said it was the policy that if the person was going to serve nine (9) months or less, the Department of Corrections (DOC) did not want them, so the Sheriff would be forced to keep inmates. He said that is part of the reason for Jail II. He said if it were more than one (1) year, generally DOC will accept them unless they are having a cap problem. Mr. Eicholtz said they are not currently holding anyone who has a sentence of more than one (1) year. He said that is part of the jail overcrowding issue. He said he could not give the average because they have people that are in jail for one day that makes bond. Some people are awaiting trial and have been in jail for 180 days. Councillor McWhirter asked if a person is sentenced for a misdemeanor or a felony, how long is the sentence and how long do they stay after they have been sentenced. Mr. Eicholtz said they hold some people for pre-trial and then they are sentenced. MCSJ will charge them while they were awaiting trial and they will get credit for time served. He said once they are sentenced they will be assessed the fee.

Councillor Talley asked if there would be an account set up for each individual and each day's per diem amount charged to the account. Mr. Eicholtz said it may be calculated the day they are released. They get a bill once they are released. He said this is not charged against the commissary account. He said if this goes through, they will work with fiscal people and maybe collections to devise a process to implement it. Councillor Talley said he would like to know the process once it is defined.

Councillor Oliver said he is concerned about the impact of the linkage of the bill once they are released. He said it looks like a debtor's prison. He said he can see the jail becoming a revolving door because people that owe money would have to go back to jail because they have not paid. Mr. Haith said this is not a punishment for having committed a crime so he believes it will be non-dischargeable. He said you have to look at the idea where some people write books after they are convicted of a crime and make money. Other states have various laws that allow the cities, counties and the state to collect that money. He said we don't have that and there is always the lottery. He said there has to be a reasonable opportunity to collect before it would make sense to go after the person. He said, as Councillor McWhirter pointed out, if the person is perpetually poor because of their incarceration, and because of the criminal history they cannot get a job they would never get above 100% of the poverty level. He said it is a practical consideration test and you cannot lock someone up for debt.

Mr. Eicholtz said in subsection "g" some language had been inadvertently added and it has been stricken.

Mr. Eicholtz said SECTION 6 creates the "Sheriff's County Prisoner Reimbursement Fund". "Per Diem Cost of Incarceration" and "dual county" has been taken out. This is the fund that creates the fund for the deposit of the fees and state statute outlines how the fund must be set up. The state statute, according to subsection "c", shall be administered by the Sheriff. Notwithstanding any other law, upon appropriation by the county fiscal body, amounts in the fund may be used by the county only for the operation, construction, repair, remodeling, enlarging and equipment of the county jail or a juvenile detention center. He said amounts shall be paid from this fund only pursuant to appropriations authorized by the City-County Council in the normal budget process.

Councillor McWhirter said she would like to see the procedures that are put in place and get some feedback in three (3) months or six (6) months or whatever is appropriate. She said she would want the Council to know the amount of revenue that collected. Mr. Eicholtz said he would be happy to do that.

Council Talley moved, seconded by Councillor Oliver, to send Proposal No. 468, 2004 to the full Council with a "Do Pass as Amended" recommendation.

Chairwoman Moriarty-Adams asked for public testimony.

Mr. Hendrickson said at one point there was a question about what other counties charge with respect to the \$200 fee being considered for mortgage foreclosure. He said his office works in all ninety-two (92) counties in the state and the most a Sheriff's office charge is \$49 in Harrison County.

Chief Shirley Challis with the Marion County Sheriff's Department said she wanted to address what Mr. Hendrickson said. She said other counties may be charging at the maximum of \$49, but other counties have capped their sales at 25 properties per month. Marion County averages 601 properties per month in their sale, it is never capped, and the personnel assigned to do the work is the same.

Councillor Schneider said he is disturbed by a couple of things. First, the fee structure in SECTION 1 Sec. 131-109. He said he understands the Sheriff's Department does a lot of work in order to facilitate the Sheriff's sales and evictions, but it is a legitimate function of what the Sheriff's Department should do and the people that will be paying for this will be buyers and it will be passed on to the wrong people. He said his second reservation is there may be some serious constitutional challenges to this, like the violent video games and curfew ordinances. He said he appreciates the Sheriff's attempt to increase revenue without raising taxes on the law-abiding citizens but in the end, we get hit with some large legal fees in making a constitutional defense of the ordinance. He said he will vote for the ordinance; however, he reserves his right to change his vote on the full floor of the Council.

The motion to send Proposal No. 468, 2004 to full Council with a "Do Pass as Amended" recommendation was carried by a unanimous vote of 6-0.

CONCLUSION

With no further business pending, and upon motion duly made, the Public Safety and Criminal Justice Committee of the City-County Council was adjourned at 6:10 p.m.

Respectfully submitted,

Mary Moriarty Adams, Chairwoman
Public Safety and Criminal Justice Committee

MMA/csp